

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

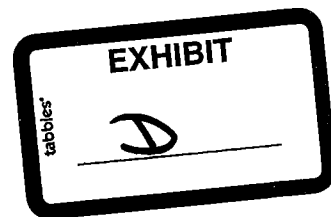
EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
and)	NO. CIV 00-1872 PHX MHM
)	
SAM DARMO, AMER DARMO and)	
SAMUEL EINHORN,)	
)	
Intervenors,)	
)	
vs.)	
)	
PINNACLE NISSAN, INC.,)	
)	
Defendant.)	
)	

Phoenix, Arizona
April 25, 2001
9 a.m.

VIDEOTAPED DEPOSITION OF ORLANDO SANTOS GARCIA
(Volume I, Pages 1 through 160, inclusive.)

REPORTED BY:
Carrie Smalanskas, RPR, CCR
Certified Court Reporter
CCR No. 50355

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5 Q. And who took that witness interview?

6 A. Ms. Lori Barreras.

7 Q. And why did you record that?

8 A. I recorded that because it had not been
9 recorded previously.

10 Q. When did you record that?

11 A. When I was putting the file together.

12 Q. And when was that?

13 A. I would say when the file was going in
14 for a recommendation.

15 Q. And when would that have been?

16 A. I can't tell.

17 Q. I am not sure I understand what you mean
18 by "can't tell." You can't tell from this log --

19 A. No.

20 Q. -- when that occurred?

21 If we go to the second page of the log,
22 is there anything on there that indicates when that
23 would have occurred?

24 A. It would have been sometime after the
25 last notation, which is dated 9/22/99.

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1 Q. And obviously sometime prior to when the
2 recommendation itself is dated?

3 A. Yes.

4 Q. So are you saying that you entered all of
5 these items that are dated between 3/31/99 and 9/23/99
6 at the same time?

7 A. Yes.

8 Q. That is not the way the log is supposed
9 to be prepared, is it?

10 A. There is no set procedure for it.

11 Q. Are you certain of that statement?

12 A. Yes.

13 Q. And so it would be a surprise to you if
14 the compliance manual indicates that events in an
15 investigation are to be recorded in the log at the time
16 that they occur?

17 MS. SHANLEY: Objection, asked and
18 answered.

19 Q. BY MS. FRANZE: Would that be a surprise
20 to you?

21 A. No.

22 Q. In fact, that is the instructions that
23 investigators receive, isn't it?

24 A. Probably.

25 Q. Investigators also receive instructions

1 that they are to record the activities that they
2 themselves perform on the log; isn't that correct?

3 A. I don't know.

4 Q. Do you have any reason to doubt that
5 statement?

6 A. Don't know.

7 Q. Does it make sense to you that the person
8 who has firsthand knowledge of the event being recorded
9 would be the one to record the event in the log?

10 A. Can you say that again?

11 Q. Does it make sense to you that the person
12 who has firsthand knowledge of the event being recorded
13 would be the one to record it in the log?

14 A. Yes.

15 Q. But in this case, in fact, you recorded
16 events that you were not involved in; is that correct?

17 A. That is correct.

18 Q. Did you record those events at someone's
19 instructions?

20 A. No.

21 Q. You did it on your own?

22 A. Yes.

23 Q. Why did you do that?

24 A. Because we have to record the actions
25 into the case log.

1 Q. Are you saying because you have to turn
2 in a completed log at the time you make a
3 recommendation?

4 A. Yes, we do.

5 Q. So at this point in time, sometime after
6 September of 1999, you set about to reconstruct what
7 the log should look like; is that correct?

8 A. When you say "reconstruct," what do you
9 mean?

10 Q. Well, you were recording events that
11 purportedly occurred on 3/31/1999, 4/1/1999, and on
12 numerous dates between March 1999 and September 1999
13 after they had actually occurred; isn't that correct?

14 A. Yes.

15 Q. And you were attempting to reconstruct
16 what had occurred; is that correct?

17 A. I am just logging in what the case file
18 has inside the file.

19 Q. Was it your intent to accurately record
20 what had occurred in this investigation?

21 A. Yes.

22 Q. And you were attempting to accurately
23 record what had occurred based upon the file that you
24 had; is that correct?

25 A. Yes.

1 Q. Did you have any other information in
2 constructing this case log?

3 A. When you say "any other information" --

4 Q. Other than the file, were you relying on
5 any other information when you set about to construct
6 this case log?

7 A. No.

8 MS. SHANLEY: Would this be a good time
9 for a short break?

10 MS. FRANZE: Sure.

11 VIDEO TECHNICIAN: Off the record at
12 10:43 a.m.

13 (Off the record.)

14 VIDEO TECHNICIAN: Back on the record at
15 10:51 a.m. This is the end of videotape No. 1.

16 Off the record at 10:51 a.m.

17 (Off the record.)

18 VIDEO TECHNICIAN: Back on the record at
19 10:54 a.m. This is the beginning of videotape No. 2.

20 Q. BY MS. FRANZE: Mr. Garcia, before we
21 broke, we were discussing EEOC Bates stamp No. 1 and
22 No. 2, which constitute the log for the charge of Amer
23 Darmo.

24 You indicated that the entry that is
25 written at 12/10/98 was written by Lori Barreras. Do

5 A. Is that what your question means?

6 Q. Well, I have asked you what documents
7 either were prepared or, in fact, came to your
8 attention between those two dates that could support
9 the amended determination?

10 A. Well, right now, I am holding the
11 document for the notes that I indicated earlier, and
12 that would be EEOC-PN 000090 and 000091. As far as the
13 retaliation, that's one of the documents.

14 Q. These are the notes you referred to
15 earlier as one of the three items that represented
16 facts that caused the amended determination, correct?

17 A. That is one that I just found, yes.

18 Q. Is that correct?

19 A. Yes.

20 Q. And you have referred to EEOC 90 through
21 91. These are actually typewritten notes that are
22 internally dated August 16, 1999, correct?

23 A. Correct.

24 Q. And that would have been after the
25 initial determination -- I am sorry, that would have

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1 been before the initial determination, correct?

2 A. Correct.

3 Q. Anything else?

4 A. I am still looking through the file.

5 Q. Mr. Garcia, we have produced to you, as
6 we previously represented, the exact production that
7 was made by the EEOC in this case, and I think what has
8 been previously identified as the Amer Darro file EEOC
9 1 through 580 --

10 A. Okay.

11 Q. -- in the exact order that it was
12 produced. You seem to be having a lot of trouble
13 moving through the file. Is that file organized in any
14 way that you are not used to?

15 A. This is not the way I organized the file,
16 so...

17 Q. How did you have the file organized?

18 A. The way we have the file organized is the
19 first part of the file has the charge, the notice of
20 charge. Then the next part is documents provided by
21 the charging party. Then the next part of the file
22 generally would be any documents that the respondent
23 has provided, and then the last part is usually
24 information from witnesses.

25 Q. And within those categories that you just

1 listed, would the order be chronological; in other
2 words, in order of date?

3 A. Yes.

4 Q. And that would be the way that you were
5 taught to keep the file at the EEOC?

6 A. That is correct.

7 Q. And that is not the way this file
8 appears, is it?

9 A. It doesn't look that way.

10 Q. And can you discern any order whatsoever
11 in this file?

12 A. No, I -- no. It starts with the
13 determination and goes to letters written to reconsider
14 the determination. Then it goes into some other
15 documents, some notes and witness letters, and that
16 sort of thing.

17 Q. Do those other documents appear to be in
18 any kind of order to you?

19 A. Not in the order that I am comfortable
20 with as far as the way I keep my files, so...

21 Q. And if this file had been produced in a
22 way that you normally kept the file, you would have an
23 easier time moving through it; is that correct?

24 A. That is correct.

25 Q. And it would have taken a lot less time

1 for you to find the documents that we have been trying
2 to search for today; is that correct?

3 A. That is correct.

4 Q. And, in fact, in terms of dated
5 documents, you would have been able to move right to
6 that section and find the date in chronological order;
7 is that correct?

8 A. That is correct.

9 Q. Do you have any idea why the file is in
10 the order that it is in?

11 MS. SHANLEY: Objection. Calls for
12 speculation.

13 A. No, I don't.

14 Q. BY MS. FRANZE: Have you ever seen an
15 EEOC file in the order that this one has been produced?

16 A. No, I haven't.

17 Q. And in your 10 years as an EEOC
18 investigator, you have never seen an EEOC file produced
19 in this format?

20 A. No.

21 Can I continue to --

22 Q. Yes, please.

23 MS. SHANLEY: Do you want to take a lunch
24 break and finish this after lunch, or do you want him
25 to go through the rest of the file first?

2 on-site?

3 A. No.

4 Q. You will agree with me that not all
5 current employees were interviewed at the on-site,
6 correct?

7 A. Can you repeat that, please?

8 Q. You will agree with me that not all
9 current employees were interviewed at the on-site?

10 A. Correct.

11 Q. In fact, relatively few of the then
12 current employees were interviewed at the on-site,
13 correct?

14 A. When you say "relatively few," what do
15 you mean?

16 Q. Well, let's say less than 20 percent of
17 the employees of Pinnacle Nissan were interviewed at
18 the on-site?

19 A. I can't make that judgment call on that
20 because I don't know how many employees they would have
21 had at that time.

22 Q. So you just have no knowledge whatsoever?

23 A. As far as the number of employees, no.

24 Q. But it wouldn't surprise you to find that
25 the majority of employees who were then working at

1 Pinnacle were not interviewed at the on-site, correct?

2 MS. SHANLEY: Objection. Calls for
3 speculation.

4 Q. BY MS. FRANZE: Go ahead and answer.

5 A. I don't know.

6 Q. And if you had wanted to know at this
7 time period the proportion of the employees interviewed
8 at the on-site, you could have asked Ms. Barreras,
9 correct?

10 A. Correct.

11 Q. But you did not do that, correct?

12 A. No.

13 Q. Isn't it also true that Ms. Barreras also
14 interviewed those employees that the charging parties
15 identified for her at the on-site?

16 A. Can you repeat that question?

17 Q. Isn't it true that Ms. Barreras
18 interviewed all of the employees who were then employed
19 at Pinnacle identified by the charging parties?

20 MS. SHANLEY: Objection, lack of personal
21 knowledge.

22 A. What was reflected in the file?

23 Q. BY MS. FRANZE: Doesn't the file indicate
24 that Ms. Barreras interviewed those witnesses
25 identified by the charging parties?

1 A. I would have to compare that to what the
2 charging parties identified as witnesses and compare it
3 to Ms. Barreras's interview to answer that question
4 properly.

5 Q. Would you agree with me that you or
6 Ms. Barreras interviewed, to the extent that you could
7 find them, every person that the charging parties asked
8 you to interview?

9 A. That, I can't recall.

10 Q. It could be a true statement; you just
11 don't know?

12 A. Right.

13 Q. Now, I take it, since you indicated that
14 201 through 205 constitutes all employees who were
15 terminated during the applicable time period, that this
16 list did not come from the charging parties, correct?

17 A. That is correct.

18 Q. And that, for whatever reason, you made
19 the decision as an experienced investigator to make
20 contact with all terminated employees of Pinnacle
21 Nissan, correct?

22 A. Correct.

23 Q. And you also made the decision to do that
24 at the exclusion of current employees of Pinnacle
25 Nissan, correct?

1 A. Correct.

2 Q. And the reason that you did that is that
3 you believed that terminated employees would have an
4 axe to grind with Pinnacle Nissan; isn't that correct?

5 MS. SHANLEY: Objection, misstates his
6 testimony.

7 Q. BY MS. FRANZE: Isn't that a correct
8 statement?

9 A. I never said that.

10 Q. Isn't it true that you believed that
11 terminated employees would more likely as a group have
12 something negative to say about Pinnacle Nissan and
13 that was your goal in sending out the letters? Isn't
14 that true?

15 A. No.

16 Q. Does it surprise you at all that
17 terminated employees, in general, may have more
18 negative things to say about ex-employers than current
19 employees have to say?

20 MS. SHANLEY: Objection, asks for
21 speculation.

22 Q. BY MS. FRANZE: As an experienced
23 investigator for the Equal Employment Opportunity
24 Commission, the largest investigator of employment

25 disputes in this country, does it surprise you that

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1 ex-employees are often disgruntled employees?

2 A. I can't answer that.

3 Q. Isn't it true that as of the time that
4 you prepared the list that constitutes 201 through 205
5 that you, in effect, were no longer acting as a neutral
6 investigator but were gathering evidence in order to
7 prosecute a case?

8 A. That is not true.

9 Q. Okay. Tell me what, if anything, you did
10 to find evidence that might support Pinnacle Nissan's
11 version of the events in this case?

12 A. Can you repeat that question, please?

13 Q. Tell me what, if anything, you did as an
14 experienced investigator for the EEOC to determine what
15 evidence existed to support Pinnacle Nissan's version
16 of the events in this case.

17 A. Just sending the letters out, and if
18 something came back, then that would be the evidence
19 submitted.

20 Q. And the letters that you are referring to
21 are the letters to the disgruntled ex-employees listed
22 on pages 201 through 205, correct?

23 MS. SHANLEY: Object to the form of the
24 question.

25 Q. BY MS. FRANZE: Go ahead and answer.

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1 A. Can you repeat that question, please?

2 Q. The letters that you referred to as being
3 your efforts to verify information submitted by
4 Pinnacle Nissan constituted letters to employees no
5 longer working for Pinnacle Nissan, terminated
6 employees, listed on page 201 through 205, correct?

7 MS. SHANLEY: I am going to object to the
8 form of the question in that I believe we are using the
9 word "terminated" in two different manners. I believe
10 Mr. Garcia did not use terminated. He used those who
11 were no longer employed. There is a difference.

12 Q. BY MS. FRANZE: Mr. Garcia, can you take
13 a look at the heading on page 201?

14 A. Yes.

15 Q. I think there is a word there, and I
16 believe it to say "terminated." Does it say
17 "terminated"?

18 A. It says "terminated."

19 Q. Is that something you wrote there?

20 A. Yes.

21 Q. And afterwards there in a parenthetical
22 is the word "employees"?

23 A. Yes.

24 Q. And, in fact, the word "terminated" is
25 underlined?

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1 A. Yes.

2 Q. And you believed that the list that now
3 is included on pages EEOC 201 through 205 constitutes a
4 list of terminated employees from Pinnacle Nissan,
5 correct?

6 A. Yes.

7 Q. And up in the left-hand corner with a
8 check mark there is another underlined statement that
9 says "letter issued"?

10 A. Yes.

11 Q. And this indicates people that -- all the
12 people on this list received a letter from you,
13 correct?

14 A. I can't say that with certainty.

15 Q. Okay. Let me rephrase that.

16 All the people on this list, you sent a
17 letter to at the address indicated; is that correct?

18 A. I can't say that either.

19 Q. Okay. Well, which people on this list
20 did you send letters to? Maybe I misunderstood your
21 testimony.

22 A. Well, I see Mark Kevin Doinidis is one
23 and a John Edward Demsky.

24 Q. I misunderstood your testimony, but is
25 there another list that indicates to whom you sent a

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1 letter?

2 A. There is no list ever indicating of who I
3 sent the letter to.

4 Q. So I am confused then. Why does this
5 document say "letter issued" on it?

6 A. That is to remind me that if I put a
7 check, then I sent the letter. It may have come back;
8 it may not have. But I don't know which individuals
9 were sent letters or not.

10 Q. I am not sure I understand. Are you
11 saying that there is no record concerning who you sent
12 letters to?

13 A. I don't know that, unless I look into the
14 file.

15 Q. And in order to tell us that, you would
16 have to look through, again, 580 documents just from

17 Mr. Amer Darmo's file?

18 A. Yes.

19 Q. A like number of documents for
20 Mr. Sam Darmo's file, and a like number of documents
21 for Mr. Sam Einhorn's file; is that correct?

22 A. That is correct.

23 Q. And that would take you some period of
24 time, correct?

25 A. Correct.

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1 Q. So if I understood you correctly, the
2 purpose of your handwriting this list was in order to
3 send letters to terminated employees, but you are not
4 certain if you actually sent letters to all of them?

5 A. Due to when I was investigating the case
6 file to now, I can't be sure of who may have been
7 issued letters or not.

8 Q. But was my statement correct, that the
9 purpose of your preparation of this list, 201 through
10 205, which seems to have about 123 names on it, was
11 preparatory to sending letters to terminated employees
12 of Pinnacle Nissan?

13 A. Yes.

14 Q. And your testimony is that you, in fact,

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing deposition was
4 taken before me, Carrie Smalanskas, a Certified Court
5 Reporter in and for the County of Maricopa, State of
6 Arizona; that the witness before testifying was duly
7 sworn by me to testify to the whole truth; that the
8 questions propounded to the witness and the answers of
9 the witness thereto were taken down by me in shorthand
10 and thereafter reduced by computer-aided transcription
11 to print under my direction; that the deposition was
12 submitted to the witness to read and sign; that the
13 foregoing 71 pages are a true and correct transcript of
14 all proceedings had upon taking of said deposition, all
15 done to the best of my skill and ability.

16 I FURTHER CERTIFY that I am in no way related to
17 any of the parties hereto nor am I in any way
18 interested in the outcome hereof.

19 DATED at Phoenix, Arizona, this 16th day of
20 May, 2001.

21

22 Carrie Smalanskas, RPR, CCR

23

24 Certified Court Reporter
25 CCR No. 50355